



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

August 5, 2016

**BY HAND AND ECF**

The Honorable Laura Taylor Swain  
United States District Judge  
Daniel Patrick Moynihan Federal Courthouse  
500 Pearl Street  
New York, New York 10007

**Re: United States v. Sean Stewart,  
S1 15 Cr. 287 (LTS)**

Dear Judge Swain:

The Government respectfully submits this letter with respect to the Proposed Jury Charge in the above-captioned case. First, given the testimony that has come in so far, the Government submits that the “Preparation of Witnesses” charge (which appears on page 25 of the draft charge) is appropriate, as are the instructions on “Discrepancies in Testimony” (p. 20), “Impeachment by Prior Inconsistent Statement” (p. 23), and “Conscious Avoidance” (p. 57).

Additionally, in light of the evidence in this case thus far, the Government also requests that the following language be added to the instruction on the Elements of the Offense, and specifically, the “Second Element – State of Mind”:

Science has not yet devised a manner of looking into a person’s mind and knowing what that person is thinking. However, you do have before you evidence of certain acts and conversations alleged to have taken place with the defendant or in his presence. The Government contends that these acts and conversations show beyond a reasonable doubt knowledge on the part of the defendant of the unlawful purposes of the charged conspiracy. On the other hand, the defendant denies either that these acts and conversations took place or show that he had such knowledge and intent. It is for you to determine whether the Government has established beyond a reasonable doubt that such knowledge and intent on the part of the defendant existed.

*U.S. v. Joseph Collins*, 07 Cr. 1170 (LAP).

The Government submits that this language should be read following the paragraph that ends with “[k]nowledge and criminal intent may, like any other fact, be established by circumstantial evidence,” before the paragraph that begins with “[b]ecause an essential element of the crime

charged is intent to defraud, good faith on the part of Mr. Stewart is a complete defense to the charge of insider trading,” on page 45 of the proposed charge.

Respectfully submitted,

PREET BHARARA  
United States Attorney

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